IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.228 OF 2005

Bhagoji Sakharam Kusale & Ors. ... Applicants

V/s

State of Maharashtra ... Respondent

Mr. Amit Shete holding for Amit B. Borkar for applicants

Shri A.S. Shitole, APP for the State

Coram : V.M.Kanade,J.

Dated : 12/04/2005.

P.C. :-

1 I have heard the learned counsel for the applicants and APP for the State.

2 The learned APP states that applicants are challenging the order passed by the trial court rejecting the application for issuing summons to prosecution witness Eknath Kundlik Barad who was examined as “panch” by the prosecution.

3 It is submitted by the learned counsel appearing on behalf of the applicants that examination in chief of P.W.5 was recorded on 23/02/2004. On the same date the applicant was made by the accused seeking permission to

cross examine P.W.5 and accordingly, the case was adjourned to the next date. Thereafter, this witness did not remain present though the witness summons was issued from time to time. Roznama which is annexed to the criminal application indicates that various efforts were made by the accused to serve witness summons on this witness, yet the witness remained absent on number of dates. Finally, the trial court rejected the application for issuing the witness summons to P.W. Eknath Barad filed by the accused.

3 The learned counsel appearing on behalf of the applicant takes an exception to this order and submits that no opportunity was given by the trial court to cross examine P.W.5, Eknath Kundlik Barad.As a result,grevious prejudice is caused to the accused.

4 From the record it appears that after examination in chief of P.W.5 was recorded on 23/02/2004 the matter was adjourned to subsequent dated. Thereafter, he could be cross examined by the accused. However, this witness did not remain present though the witness summons was issued from time to time. In view of the position which is reflected from the roznama annexed to the application, the question regarding evidentiary value of deposition of Eknath K.Barad,P.W.5 shall be taken into consideration by the trial court at the time of final hearing of the case.This question will be decided by giving adequate

reasons when the final

judgment is delivered by the trial court. With these directions, criminal application is disposed of.

(V.M.Kanade,J.)